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NOTES OF THE WEEK

The First Woman Recorder

Her Majesty the Queen has assented to the appointment of Miss Rose Heilbron, Q.C. as recorder of Burnley. Miss Heilbron has, therefore, the honour of being the first woman to occupy such an appointment although she will not be the first of her sex to try indictable offences, that distinction having fallen to Miss Dorothy Dix who became deputy recorder of Deal in 1946.

Miss Heilbron, who was born in 1914, was educated at Belvedere school and Liverpool University where she graduated LL.B. with 1st class Honours in 1935. Subsequently she became a Lord Justice Holker Scholar at Grays Inn in 1936, proceeded to her LL.M. in 1937, and was called in 1939. Thereafter she practised on the Northern Circuit and has figured in many *causes célèbres* notably on the criminal side. The new recorder took silk in 1949. Miss Heilbron (who in private life is the wife of Dr. Nathaniel Burstein), will certainly add personal charm as well as legal acumen to the Bench and we congratulate her warmly on her well-deserved honour which marks a milestone in the history of her profession.

The late Sir Valentine Holmes, Q.C.

We announce with great regret the death at the age of 68 of Sir Valentine Holmes, Q.C., the distinguished common law advocate.

Sir Valentine came of legal stock being the son of Lord Justice Holmes of the Irish Court of Appeal. He was born in 1888 and educated at Charterhouse and Trinity College, Dublin. Called to the bar by the Inner and Middle Temples in 1913 he gradually acquired a substantial common law practice. His skill became especially sought after in relation to pleadings and the other procedural steps before trial.

In 1935 he was nominated Junior Common Law Counsel to the Treasury and his private practice also continued to grow. The post of Treasury Junior normally carries with it a High Court Judgeship upon retirement and there was some surprise in 1945 when he resigned this position and took silk. Once a Q.C. he had one of the largest leading practices of the day, being especially prominent in the fields of libel and slander—in fact, in this field, during 1947, he led for the defendants (ourselves) in the celebrated case of *Lea* v. *Justice of the Peace, Ltd.* His qualities as an advocate received the following tribute in *The Times*: "Holmes was by no means a showy advocate; indeed at first sight, perhaps owing to the handicap referred to, he he might have appeared unimpressive, but his wide knowledge of law, the thoroughness with which his cases were prepared and the absolute integrity with which he presented them made him an advocate of a high order and a dangerous opponent. As a cross-examiner, there was nothing theatrical about him, and without bullying he would neatly get from a witness just what he wanted and leave it at that. His retirement from the bar, stated to be for reasons of health, in 1949 was a matter of real regret to his many professional and lay clients, and to his fellow members, among whom he was deservedly popular . . ." Sir Valentine Holmes became a Bencher of the Inner Temple in 1946 and was knighted the same year.

The Late Sir Rhys Hopkin Morris, Q.C., M.P.

We record with great regret the death at the age of 69 of Sir Rhys Hopkin Morris, Q.C., M.P., a Deputy Chairman of Ways and Means and a Deputy Speaker in the House of Commons.

Sir Rhys was a son of the cloth being born in 1888 at Maesteg, Glamorgan, where his father was a Congregational Minister.

He was educated at the universities of Wales and London and called to the bar by the Middle Temple. Thereafter he joined what was then the Oxford and South Wales Circuit. He served in the Army throughout World War I and was mentioned in dispatches.

Sir Rhys first entered the political arena in 1921 when as a young barrister he had the temerity to support an independent Liberal against a Lloyd-George Liberal at the Cardigan by-election that year. This intervention brought him into personal enmity with the great Liberal leader and when he was returned in 1923 as an independent Liberal for Cardigan, the disputes between the two became more frequent both in and outside the House.

Hopkin Morris was well on the way to becoming the acknowledged leader of the Welsh Liberals when early in the 1930's he accepted the post of metropolitan magistrate. In this post he was a success and his judicial care and courtesy were appreciated by all who came before him.

In 1936 his career changed course again when he became BBC Regional Director for Wales. A cultured Welshman, he was responsible for much of the practical development of the wireless services of the Principality. He was, however, unusual for a member of his race, in that, as he himself admitted, he possessed no musical sense.

In 1945 he returned to Parliament again in the Liberal interest, this time for neighbouring Carmarthen. By this stage he was well on the way to earning for himself the title of the " Member for Wales."

Six years later he became a Deputy Speaker and Chairman of Ways and Means of the House of Commons and in the discharge of these arduous duties he became known for his patience, courtesy and tolerance. Sir Rhys, who was knighted in 1954, was in full harness in the House of Commons until his death. In physique he was small and slight and his face with its deep-set eyes was when relaxed, elfin-like and sympathetic. His disposition was thoughtful, modest and retiring. The nation has lost a distinguished public servant and the Principality one of her proudest sons.

Magistrates' Courts and the Police

In the *Police Review* of November 23 there is a reference to our note at p. 686 *ante* about the position of the police in relation to the magistrates' courts. As we might expect, our contemporary shares our opinion, that if the public comes to believe that the courts are in some way under the control of the police or that the police are connected with the magistracy it would be unfortunate. The *Police Review*, which represents, as we believe, responsible opinion throughout the police forces, says the police are as anxious as the magistrates to avoid giving the impression that the summary courts are in any way under police control.

The impression that magistrates always believe the police is unfortunate and generally unfounded, but it still prevails in many quarters. On this the *Police Review* says " The magistrates cannot be blamed, we think, for the credence they attach to police evidence. Unlike the defendant, the police witness has no axe to grind, and he has nothing to gain (but everything to lose) by departing from truth in his evidence. What the magistrates must ensure is that all witnesses are given a fair hearing and that there is no suggestion that the court is controlled or directed by the police."

It is perfectly true that the policeman is almost invariably a witness whose credit cannot be attacked on the ground of his character or of prejudice. What is important is that the court should not appear to check cross-examination or contradiction of a police officer's evidence. Like other witnesses he may be mistaken and even though very rarely, not telling the whole truth. The fact that a truthful witness is quite unshaken by cross-examination strengthens belief in his credibility, and at the same time demonstrates to the public that the court has put no obstacle in the way. Because policemen are usually telling the truth they do not mind being closely cross-examined.

" Toughs " in Approved Schools

We read and hear much about disturbances and violent behaviour on the part of teddy boys, and there is no doubt that all too many young fellows in their teens are out of hand and a nuisance, sometimes even a danger, to law abiding people. Some people think that if they received less publicity they would fade out.

In his report, Mr. C. A. Joyce, headmaster of the Cotswold approved school comments on teddy boys thus; " The arrival of two or three pseudo ' Edwardians ' brought certain facts to light very clearly. First, on the whole, the ordinary sensible boy is not attracted. Our particular coterie were regarded by the other boys as rather strange and for the most part, undesirable types. (The schoolboy term ' fathead ' is descriptive!) Secondly, it was very manifest that *singly*, there was no standard of courage or toughness. Offensiveness disappeared with extraordinary rapidity as soon as any suggestion of replying in kind was mooted by the other boys. Thirdly, before very long it was recognized that it took more courage to read the lesson in chapel than to use filthy language in the school. It would appear to me, on the evidence of our small society here, that this particular cult is on its way out and that a rather firmer line from the bench, when occasion arises, would do a good deal to expedite its departure."

Approved schools for girls may also have their problems of toughness. Miss V. L. Peacock, headmistress of Delrow House tells of difficulties with some 13 and 14 year old girls, big and strong, who know of only one way of settling an argument, namely, with fists. Fortunately they are few in number, but their behaviour can easily become infectious.

In pleasant contrast is the account of parties given to some of the residents from the Star and Garter Home at Richmond: " The majority of the men are elderly and many badly maimed, and each year I am amazed at the care and attention bestowed on them by the girls —no one is allowed to feel neglected and every girl takes care of someone. The day ends with a sing-song in which everyone joins. Truly all girls have a ' mother sense,' and these girls did indeed mother our guests."

Effect of Divorce on Maintenance Order

From the full report of the case of *Wood* v. *Wood* [1956] 3 All E.R. 645, a case to which we referred in our issue of November 10, it appears that observations of special importance to magistrates' courts were made in the judgment of the court read by Collingwood, J.

There has perhaps been a tendency to give too wide an application to the case of *Bragg* v. *Bragg* (1925) P. 20; 94 L.J.P. 11., but this case and others have been interpreted as leaving the justices with discretion to discharge or not to discharge an existing maintenance order when there has been a decree of divorce between the parties whether made by an English court or a foreign court.

In *Wood* v. *Wood*, *supra*, Collingwood, J., referred to the earlier case of *Wood* v. *Wood* [1949] W.N. 59 in which Lord Merriman, P., pointed out that *Bragg* v. *Bragg*, *supra*, was the case of a successful wife and that no question had therefore arisen of her having disentitled herself to some form of maintenance, but that the situation was manifestly different when the wife was the guilty party in the divorce , if through her own fault she was no longer able to represent herself as a wife entitled to maintenance except in very special circumstances. Collingwood, J., also observed that there was no reported case in which an order had been maintained in favour of a wife against whom a decree had subsequently been granted, whether by an English or a foreign court. He added that in the opinion of the court it was most important to avoid any suggestion that effect is not being given to the foreign decree because of the grounds on which it is based.

Principles to be Observed

The principles laid down by the court were as follows, having regard to the reasoning in *Bragg* v. *Bragg*, *supra*, based on a convenient use of the concurrent jurisdiction in this country. First, that in the case of an English divorce supervening on a magistrates' order, the order should be discharged if the wife is the divorcee, except possibly: (i) in the case of a decree to both parties, or (ii) where the Divorce Court has indicated the propriety of a compassionate allowance for the wife, and secondly, that in the case of a wife being divorced by a foreign court of competent jurisdiction the order must be discharged if the wife has been found not to be entitled to maintenance in that foreign court; further, that if it is evident that her rights in the foreign country differ from those in this country the proper course is to discharge the order and leave the wife to have recourse to whatever rights she may have in the foreign country. The same result as in the last case should follow also where, as in the present case, no evidence has been given that she is entitled to any rights at all in the foreign country.

A Handbook for Quarter Sessions

The law administered at quarter sessions is to be found in standard works such as *Archbold's Criminal Pleading* which is, we suppose, consulted at every such court. There the law is set out in detail with copious citation of cases.

Many magistrates, practitioners and others with business at quarter sessions would, we have no doubt, be glad of something much smaller, not as a substitute, but as something which might be regarded as a sort of index or guide to the law on the powers and procedure of the court, which could be used for quick reference without the necessity for consulting text-books.

We are glad to be able to announce that we are publishing such a booklet. It is entitled *Index To Common Penalties and Formalities* and has been prepared by Mr. G. N. C. Swift, clerk of the peace for the county of Cumberland, and Mr. R. L. Graham, his deputy. The work deals with the powers of the court to pass the various kinds of sentence and to make certain orders, with special reference to such matters as the age and record of the offender. These are dealt with in tabular form and a number of cases as well as sections of statutes are cited. We hope this book will supply a need that has been felt, and that magistrates, clerks of the peace, and practitioners at quarter sessions will find its form, as well as its content, to their liking. The price is 10*s.* 6*d.*

Compulsory Purchase

The decision in *re Felkins Arbitration* (1956) 6 P. & C.R. 267 turned upon the language of a local Act, but is of some interest in connexion with the problem raised incidentally at the top of the second column on p. 693, *ante*, *viz.*, how can it come about that a compulsory purchase order, initiated *mala fide*, can reach the operative stage? That problem was, however, posed in relation to the general law: the new case arose from a local Act passed in 1938. This gave powers to purchase compulsorily a piece of land for construction of a sea wall. The Act said that if the owner was in possession in September, 1945, the local authority were not to enter upon or use the land except for the purpose of constructing the sea wall as soon as practicable. By reason of the war and subsequent financial difficulty, nothing was done towards erecting the sea wall, but in 1948 the council executed a conveyance to themselves and went into possession. It was known at that date that the sea wall could not be erected within any time that could be foreseen; the local authority nevertheless took the land and used it for carrying on a bathing establishment, from which it made a profit. Harman, J., held that the words " as soon as may be reasonably practicable," pointed only to such delay as arose from practical considerations in the doing of the work and he found that the council when they went into possession had no intention of starting on the sea wall, for which they were unable to obtain loan sanction. The local Act did not authorize what they had done.

A Refund of Rates

We fairly often receive queries about the repayment of rates which have been paid by mistake, but such a case does not often come before the courts. This happened in *Spiers & Pond, Ltd.* v. *Finsbury Borough Council* (1956) 49 R. & I.T. 598. The firm became tenants of two floors in a railway station in 1935. These floors were assessed as a whole; the lessors agreed to pay the rates, and did so. In 1951 a new lease was entered into, of part only of the premises, and the lessees undertook to pay the rates in future. The rating authority were informed by the lessors of this last fact, but not apparently of the fact that the firm were now tenants of a smaller hereditament than that on which the lessors had formerly paid rates. There was at this point a misunderstanding between lessors and lessees about the rateable value; some person in the lessees' office telephoned to the office of the lessors, asking about this, and was given a figure which was correct for the premises comprised in the old lease, but not for the new. The tenants had not (it seems) taken the elementary precaution of finding out from the rating authority whether the value mentioned to them on the telephone was that of their old premises or their new premises. The demand note, when received, agreed with what they had been told upon the telephone and they did not move for an alteration of the valuation list for another three years. This was done in 1954 with the effect, roughly speaking, of halving the rateable value. The tenant firm then set about trying to recover from the rating authority the difference between what they had paid from 1951 to 1954 and what they would have paid if the valuation list had been altered in 1951. We have consistently advised that a local authority should refund rates overpaid by mistake, where this is the course which would be taken by a fair minded man in his private affairs, but it evidently seemed to the rating authority in this case that there was no ground for a refund. No blame for the comedy of errors rested upon them—the fault lay with the person who used the telephone, and did not check the answer he received. Steps could have been taken in 1951 to show the new rateable hereditament in the valuation list, and there was no reason for the ratepayers at large to bear the loss arising from the failure to take those steps.

On Checks to Litigation

The New York correspondent of a London paper reports a habit (or at least a wave) of litigation in that city, and seems from some incidental remarks to indicate that things are much the same all over the United States. According to him the city council has a staff of 420 qualified lawyers, mostly engaged in the defence of claims for damages. Last year, he says, the council was sued for negligence of one sort or another, the damages claimed reaching nearly 127 million dollars. Successful plaintiffs obtained more than 7 million dollars. Success, to the tune of about an eighteenth part of the sum demanded, is said to be rather above the national average. The police appear to be a favourite target. But hotels, department stores, and the medical profession are also advised to insure themselves against the risk of litigation. Some of the claims mentioned by this correspondent are superficially ludicrous; ludicrous or not, it seems that they have been actually brought before the courts as a speculation. Many lawyers, it is said, are prepared to pay court costs as a means of getting their names into the

papers; if the damages claimed are so fantastic that the journalists make headlines of them this is all the better, and it does not matter much that the plaintiff recovers no more than a fraction of his claim. (One wonders, however, who pays the costs incurred by the defendant, where an action has been wholly or substantially unsuccessful. Is this prospect no deterrent?)

In our own country speculative actions are not unknown. Local authorities, in particular, are exposed to them, and there is some ground for thinking that since the institution of the National Health Service the number of speculative actions against medical practitioners and hospitals has increased. England has, however, so far been protected from the excesses described as common in New York, partly by the system of security for costs and still more (we think) through the internal discipline of the legal profession.

It is not impossible for a solicitor to launch a speculative lawsuit, and a few solicitors have made themselves notorious by a practice of getting into touch with potential plaintiffs and then stimulating claims. Such conduct is, however, frowned on by professional opinion. It may even be that the division of the legal profession into two branches reduces the danger of purely speculative actions, since the solicitor will not get his name into the papers, while the barrister (who may, if he is lucky, get talked about by the laity for his conduct of a case) has nothing to do with its earliest stages.

More Cars on the Grass

We have spoken more than once of an aspect of the parking problem which differs from the obstruction of the streets. We mean the practice of leaving cars on grass verges and other ornamental spaces. We dealt at some length last year with action taken by a local authority in the north of England, to prevent continued damage on its housing estates, either by the tenants or by outsiders who regarded the council's ornamental pieces of ground as convenient places for leaving vans as well as cars. A midland newspaper reports that similar action has been forced on the urban district council of Kenilworth, where it is said the damage had grown to proportions which left the council no option but to give notice to quit to the worst offenders. Another newspaper reports a refusal by the Minister of Housing and Local Government to allow the city council of Oxford to provide garages for council tenants, and we have much sympathy with the council's protest. "All over our council estates," said a member of the housing committee, "you will see cars littered all over the place." It was, we believe, when Mr. Neville Chamberlain was Minister of Health that the Ministry developed enough foresight to realize that motor cars would soon be among the ordinary possessions of what the Housing Acts still called the working classes. We suppose that the present refusal to allow garages can be counted among the unfortunate results of this year's financial stringency. From this point of view it may be justified, but that financial stringency does not prevent council tenants, and other persons of like means, from acquiring motor cars. These, if there is nowhere else to put them, will certainly be left in the streets and pretty certainly on ornamental spaces on the council's estates.

In the same context we have also spoken more than once of the ruin of grass verges in residential streets in London, not on housing estates, but in residential roads where in some cases the abutting houses had high values. Some Practical Points have indicated doubts about the appropriate powers to be used for protection of such verges, doubts arising from uncertainty over the statutory power under which the grass verge was put there, and argument on the question whether it was dedicated as part of the highway. If dedicated, was it to be part of the footway or a highway for all purposes, or was it *sui generis*? In answering such questions we have done our best to dispose of doubts, and to encourage local authorities to be alert for the protection of this type of amenity. The inaction of some of the London borough councils is the more difficult to understand since the enactment of s. 38 of the London County Council (General Powers) Act, 1955. This section supersedes provisions already existing in some special Acts in London, and also the related provision in s. 1 of the Roads Improvement Act, 1925. Henceforth, anything done already under the provisions which have ceased to have effect will be deemed to have been done under s. 38 of the new Act, which also gives new and specific powers for several purposes, including the laying out of grass margins or gardens in streets repairable by or vested in a metropolitan borough council. So far so good, and there is power to do the same things (with the consent of the owner) upon property bounding or abutting on a street. Not so good is the new machinery for protecting what has been done against encroachment. The section provides for exhibiting a notice to prohibit persons from entering upon, or causing vehicles to enter upon, a garden in a street or a grass margin maintained in an ornamental condition. The notice is to be "conspicuously posted" on or near the grass margin or garden to which it relates, and if a person contravenes a notice so posted he will be liable on summary conviction to a fine not exceeding 20*s*. This is a bad joke—the more so that the offence is "entering," so that a man who leaves his car on the grass for a week has committed only the original offence. The provision requiring conspicuous notices is evidently based upon a similar requirement regularly embodied in byelaws in the provinces, designed to prevent cycling on footpaths and similar abuses. In such byelaws it is proper, because many country footpaths are lawfully usable by cycles, or have been so used for many years, and it is reasonable that a person shall not be punished for cycling on a particular footpath until he has been warned that he must not. But for grass verges or ornamental gardens in a street we should have thought such a preliminary warning was superfluous, since no sane person could suppose that public authorities or land-owners, who go to the expense of laying out and maintaining grass or garden land, have done so for the purpose of its being used by vehicles. We do not consider, therefore, that there would have been any hardship upon the vehicle owner of the present day if new penalties had been applied to him, without its being necessary first to disfigure the street by conspicuous notices. Nevertheless, the power is there and should be used for what it may be worth, although we fear that the borough councils who have been so unfortunately negligent for years will make the provision about notices an excuse for continued inactivity, and will say that the penalty of 20*s*. is so grotesquely disproportionate to the damage done that it is hardly worth while to take proceedings—while the selfish motorist who cares nothing for public amenity will find it cheaper to cut up someone else's property, and pay a few shillings every now and then (if summoned), than to provide a garage or stand the car in his own garden. We can but wait and hope.

Motor Fuel Economy

A circular dated November 7, 1956 from the Ministry of Health to the councils of counties and county boroughs calls attention to the Government's request to dealers in oil and motor fuel to reduce by 10 *per cent.* the amount supplied to consumers. The point of the circular is to indicate to local authorities directly concerned that the new restrictions will not apply to ambulance

services, and that provision is also made, as already stated publicly, for medical practitioners, home nurses, and midwives. We suppose that similar provisions will have been made for the fire service and the police. The London Transport Executive have announced that use of their vehicles for excursions and tours will stop, and that private hire of their vehicles will be drastically restricted. A great deal can be done by public authorities, who control many thousands of vehicles, to economize in the use of motor fuel, and no doubt this is being done. There remain the two fields of commercial vehicles (other than passenger transport), and the private motorist. British Road Services have announced a curtailment of their facilities for goods carriage, and, as was done in the war, combination among other users of goods vehicles may come about. A cut in diesel oil, announced on November 16, will tend this way. While this note was being written, the rationing scheme was announced to come into force in mid-December, and the Government had probably interpreted rightly the general feeling of the public, when they decided to put off rationing till then. Concurrently, steps are being taken in many other countries to prohibit Sunday motoring, no doubt with obvious exceptions, and the Minister of Fuel and Power has requested motorists to refrain voluntarily from week-end pleasure motoring. Rationing, when it starts, must cut out most Sunday motoring and a great deal of Saturday motoring for pleasure. Meantime people who can afford to do so (and have a place for storage) are boasting of their skill in laying in stocks of petrol, and there is open talk of the rising price on the black market: at the beginning of December we heard from London that a price above 12*s.* had been quoted in November. This is a normal consequence of delay in rationing, and at present means no more that that some retailers will supply larger quantities at a high price than at the standard price. When rationing has started, it is to be hoped the black market will be watched, for its existence will then mean (as in the war years) replenishment by theft and fraud. It will be in nobody's interest that a practice should revive, of letting persons with money free themselves from the restrictions imposed on other people.

MURDER DETECTION AND REALITY

[CONTRIBUTED]

How different in real life, in contrast to fiction, is the task facing the police in the discovery of a murderer and the proving of the case against him or her. In so many cases so different and much more difficult than the public (ardent readers of the exploits of the great fictional detectives) realize.

How often, police officers, confronted with a baffling murder, have longed for the circumstances and surroundings that the writers of detective novels and film scenario so easily produce and clinch successfully in their final pages or closing scenes.

The man in the street is apt to confuse the fictional results of these authors' and producers' efforts with real life. In fact, a murderer (especially where the evidence is purely circumstantial) can provide a problem that even the most experienced police officer, aided by every modern scientific device, finds very difficult to solve. However clear minded, experienced or tough the detective and uniformed officers may be, they are not clairvoyants and they can not afford to make mistakes in cases of such gravity. When they make an arrest for this major crime, there must be no turning back. The evidence against the accused, must be, so far as is humanly possible, devoid of any element of doubt. Usually this evidence has only been obtained after long and patient inquiry, the careful sifting of statements and the meticulous evaluation of clue or clues.

The building up of the case from the finding of some incriminating item or from obtaining some scrap of information is not done miraculously. Before the arrest is finally decided upon, the bits of the jig-saw brought in by the man on the beat, the detective in his house to house inquiry, the result of the plain clothes man's shadowing or listening to gossip, the various experts' considered opinion on articles that might even include scrapings from under a finger nail or the examination of a stone doorstep upon which a weapon has been sharpened, together with salient legal points, must all be assembled into a plain and conclusive whole. The finally assembled jig-saw will have to resist being taken to pieces in the Court of Assize.

Motive, in a case of murder may help—wishful thinking is of no earthly use.

It can be that the murderer who most carefully plans his crime, is more quickly discovered than the person who does not evolve much scheming in his or her premeditated crime. The careful planner, despite his calculations, not being able to forge every link soundly in his macabre chain of thought and deed. Some human element, some quite unexpected happening, making a tiny, but vital hole, in the carefully thought out plan.

From the days of the Bow Street Runner up to the modern detective, hard, slogging work in the uncovering of guilt in cases of murder, has been, more often than not, the order of the day.

From the constable on the beat to the specialist in forensic science, all know that in British law one salient point prevails —it is " not what is known " about a person, that will convict—but " what can be proved."

The famous Holmes in his remark to Watson that his deductions made things (even in most impossible situations) " elementary," usually seemed to have clues and a set of circumstances that made detection seem mere child's play; but in reality the impossible does not provide the possible, so far as easy detection is concerned.

The ingenious devices of the " who dun it " writer or " the smash across the jaw with the threat of ' Talk or I'll see you swing (or fry)' " of the film world, cut little ice in the cold, hard facts of murder detection.

Motives of reward or revenge produce the informer—but even then, this individual's talk has to be sifted to extract the real grains of truth.

In so many cases of murder, without the solid spadework needed to establish guilt, the modern detective might just as well adopt the methods of the witch doctor, who dances around in his weird trappings, smelling out victims, to show some kind of result, but fortunately the man in the street, who so often expresses his opinion about the apparent slowness of the wheels of British justice, is protected by that same British justice always demanding unassailable proof before conviction is recorded.

ENCROACHMENTS UPON THE HIGHWAY

From time to time, solicitors to highway authorities are called upon to deal with cases where there has been an encroachment upon the rights of the public, *e.g.*, by the grubbing up and removal of a hedge and its replacement by a fence some feet nearer the edge of the carriageway.

There is curiously enough an almost universal duty upon local authorities to safeguard public rights of passage, although in practice today only those local authorities who have highway functions are likely to take proceedings for obstruction or encroachment.

Thus s. 11 of the Local Government Act, 1888, provides in the case of counties

> " the county council shall have the same powers as a highway board for preventing and removing obstructions and for asserting the right of the public to the use and enjoyment of the roadside wastes."

In the case of all other authorities, including county boroughs, boroughs, and district councils[1], the statutory duty is contained in s. 26 of the Local Government Act, 1894, which commences

> ". . . it shall be the duty of every district council to protect all public rights of way and to prevent as far as possible the stopping or obstruction of any such right of way . . . and to prevent any unlawful encroachment on any roadside waste within their district . . . "

This section was not affected by the transfer of roads in rural districts to the county council (Local Government Act, 1929, s. 30 (1)).

There are four remedies open to a local authority in a case of obstruction or encroachment:—

(*a*) Action at the relation of the Attorney-General in the Chancery Division.
(*b*) Indictment for obstruction at common law.
(*c*) Summary proceedings.
(*d*) Self-help.

Before dealing with each of these remedies, it is necessary to consider first of all what interferences with the public rights in a highway justify the highway authority in taking action. This in turn requires some consideration of the extent of the highway limits.

EXTENT OF HIGHWAY

(*a*) *Fenced road*

" The presumption is that *prima facie*, if there is nothing to the contrary, the public right of way extends over the whole space of ground between the fences on either side of the road: that is to say, that the fences may *prima facie* be taken to have been originally put up for the purpose of separating land dedicated as a highway from land not so dedicated." (*Per* Vaughan-Williams, L.J., in *Neeld* v. *Hendon U.D.C.* (1899) 63 J.P. 724).

If there are fences at the side of the highway then *prima facie* those fences are the boundary of the highway. (*Offin* v. *Rochford Rural Council* [1906] 1 Ch. at pp. 352, 353; 70 J.P. 97). It is for the party who asserts that the fence is not the highway boundary to give reasons why the fence was put up for some different purpose. This he may be able to do from the " dimensions shape or character of the ground " *per* Joyce, J., in *Harvey* v. *Truro Rural Council* ([1903] 2 Ch. at p. 645; 68 J.P. 51): " the nature of the district through which the road passes: the width of the margins: the regularity of the line of the hedges and the levels of the land adjoining the road " *per* Lord Russell, C.J., in *Neeld's* case (*supra*). Cases in which the normal presumption has been rebutted are *Neeld's* case (*supra*): *Countess of Belmore* v. *Kent C.C.* [1901] 1 Ch. 873; 65 J.P. 456: *A.-G. & Croydon R.D.C.* v. *Moorsom-Roberts* (1908) 72 J.P. 123: and *Hinds & Diplock* v. *Brecon CC.* [1938] 4 All E.R. 24. For a case in which an unsuccessful attempt was made to rebut the presumption *see Harvey* v. *Truro Rural Council* (*supra*).

The conclusion which one reaches from a perusal of these cases is that acts of ownership have probably carried more weight with the court than any other consideration. Thus in the case last mentioned the highway authority had for many years used a part of the land encroached upon as a dump for roadside stone. In the case of *Belmore* v. *Kent C.C.* (*supra*) on the other hand there were many acts of ownership inconsistent with public rights, and Cozens Hardy, J., said at p. 877 " I do not find a single act done on the strip by the road authorities until the acts complained of in this action " and accordingly gave judgment against the county council.

(*b*) *Unfenced road*

Where a highway is not bounded by fences the highway authority will have no presumption of law to help them. Indeed, it would appear that it will be for them to show that as a fact the space dedicated to the public extends beyond the metalled portion. In *Easton* v. *Richmond Highway Board* (1871) L.R. 35; J.P.N. 756, a narrow lane 12 *ft.* between fences debouched on to a village green. The Lord of the Manor erected a wall on each side of the metalled road leaving a space of 16 *ft.* between walls. A prosecution under the Highway Act, 1864, s. 51, failed. The extent of dedication is a matter of fact. Under modern conditions it would probably not be difficult to establish a public right of way over a width greater than the actual metalled portion. In *Easton's* case, in 1871, two loaded hay-carts had never been known to meet! It is usual for highway authorities today to cut the grass for some distance on each side of the carriageway and this width could reasonably be claimed as highway. A case illustrating what is likely to be the modern tendency is *Rowley* v. *Tottenham U.D.C.* [1914] A.C. 95; 78 J.P. 97.

Sometimes an uninclosed highway will have been awarded in an Inclosure Award. In this case it will not be difficult to establish the correct width in spite of the absence of fences. The public will be entitled to the full width awarded even if part only is passable (*Turner* v. *Ringwood Highway Board* (1870) L.R. 9 Eq. 418).

(*c*) *Road with ditches*

The presumption is that the ditches belong to the owner of the adjoining land and do not form part of the highway (*Hanscombe* v. *Bedfordshire C.C.* [1938] 3 All E.R. 647; 102 J.P. 443). At the same time there is no rule of law which prevents a ditch being dedicated as part of the highway (*Chorley Corpn.* v. *Nightingale* [1906] 2 K.B. 612; 70 J.P. 500). Here again much would seem to turn upon the acts of ownership which have been exercised by either party. In *Hanscombe's* case the ditch served as an overflow for the landowner's pond: was at all times cleansed by him: and an inspection chamber had been inserted, etc. The county council were therefore not entitled to pipe the ditch without consent. In the *Chorley Corporation* case, on the

[1] A parish council have also certain powers and duties under the section.

other hand, the ditch was essential to the existence of the highway and had been piped by the road authority many years before the action. It was held that the site of the ditch formed part of the highway.

ACTIONABLE INTERFERENCES

If the public are prevented from freely, safely and conveniently passing along the highway by some wrongful act, *e.g.*, by some erection, excavation or projection, then a nuisance arises. Of course, not all obstructions are wrongful. As is well known, some obstructions are authorized by statute: others such as markets or fairs are permitted because the highway is presumed to have been dedicated subject to them: whilst others again are lawful because they arise during the repair of the highway without negligence or during the repair of adjoining property, the obstruction being reasonable in quantum and duration.

It is less commonly appreciated that a trivial obstruction is not an actionable nuisance—although triviality is not a defence to summary procedings under the Highway Acts (*Clarson* v. *Arnold* (1890) 54 J.P. 630). The importance of this is that if summary proceedings are not available, there is no remedy for inappreciable interferences which do not affect the convenience of the public. No doubt the rule *de minimus non curat lex* must be applied with caution (*see e.g.*, *Almeroth* v. *Chivers* (*W.E.*) *& Sons Ltd.* [1948] 1 All E.R. 53 C.A.). At the same time the planting of bulbs of flowers in the grass verge and the placing of ornamental stones to mark the edge of a private carriage drive would appear to the writer to be within the rule.

REMEDIES

Action by the Attorney-General

It is sometimes said[2] on the authority of *Newton Abbott R.D.C.* v. *Wills* (1913) 77 J.P. 333 that a highway authority acting in pursuance of its statutory powers need not join the Attorney-General as plaintiff in an action for a declaration and injunction. In that case proceedings were brought for (*a*) a declaration that there was a public right of way along the road in dispute and (*b*) an injunction to restrain the defendant from continuing to stop the right by means of gates. Swinfen Eady, J., who tried the action in the Chancery Division, said that he could not conceive why a rural district council could not seek to establish a public right of way without the intervention of the Attorney-General.

It is suggested nevertheless that this case must be confined to its particular facts. The action had been compromised and the defendant had withdrawn his defence and submitted to a judgment declaring that there was a right of way over certain of his land. No injunction was granted and the question of public nuisance by obstruction raised in the statement of claim was not proceeded with. It seems probable therefore that the case is only an authority for the proposition that a local authority may seek a declaration as to the rights of the public without joining the Attorney-General as party.

The earlier decision of *Wallasey Local Board* v. *Gracey* (1887) 51 J.P. 740 approved in *Tottenham U.D.C.* v. *Williamson & Sons Ltd.* (1896) 60 J.P. 725 is quite categoric that a local authority cannot maintain an action for public nuisance unless it has suffered special damage. Although it was said in *Louth U.D.C.* v. *West* (1896) 60 J.P. 600, that " the plaintiffs suffered special damage by reason of the unlawful act of the defendant, because it was their duty by statute to set it right again," this cannot affect the clear ruling in the other cases cited, and was in any case obiter.

[2] *See e.g.*, *Pratt & Mackenzie*, p. 431, note (*g*).

There would appear to be some doubt whether in the absence of the Attorney-General, a local authority can effectually bind the public in abandoning any right claimed. This is a further reason why an authority should apply for the authority of the Attorney-General to use his name as Plaintiff at their relation.[3]

Where it is desired to take proceedings in the Chancery Division, the ordinary rules applicable to equitable relief will presumably apply. *See A.-G.* v. *Colchester Corpn.* [1955] 2 All E.R. 124 where a mandatory injunction was refused in the case of a franchise ferry, which is akin to a public highway in law. If, for example, there were unreasonable delay in bringing the action, the Court might refuse to grant an injunction leaving the plaintiff to such other remedies as might be open to him (*post*).

Indictment

At common law an indictment will lie in the name of the Crown for obstruction of a highway. On the whole today, a highway authority is likely to prefer the issue of a Writ in the Chancery Division, but even if equitable relief would be barred, *e.g.*, by delay, an indictment would lie. At common law no lapse of time will justify a nuisance, and even the consent of a highway authority is ineffectual for the purpose of legalizing the obstruction or encroachment (*Harvey* v. *Truro R.D.C.*, (*supra*)). To constitute an indictable offence, the encroachment must be appreciable (*R.* v. *Bartholomew* (1908) 72 J.P. 79; *R.* v. *Leprue* (1866) 30 J.P. 723).

Summary Proceedings

Section 51 of the Highway Act, 1864, will sometimes provide a suitable remedy, especially if the encroachment or obstruction is trivial. The first important point about the section is that proceedings must be instituted within six months of the encroachment, as the erection of a fence, for example, is not a continuing offence. (*Ranking* v. *Forbes* (1870) 34 J.P. 486: *Coggins* v. *Bennett* (1877) 2 C.D.P. 568). The second point to observe is that the section does not prevent an owner doing what he likes on his own land even if it be within 15 *ft.* of the centre of the highway. It is therefore necessary to ascertain the limits of the highway before deciding whether an offence has been committed (*Thorne* v. *Field* (1869) 33 J.P. 727: *Easton* v. *Richmond Highway Board* (1871) 35 J.P.N. 756). But under the Act of 1864 (unlike the provision in s. 69 of the earlier Highway Act, 1835) it does not matter that the encroachment is not upon the metalled part of the road, as long as it is upon the space, metalled or not, which has been dedicated to the public. The third important point on the section is that it only covers encroachments within 15 *ft.* of the centre of the road (ascertained as laid down in s. 63 of the Highway Act, 1835).

The only exception to this rule is where the effect of the encroachment is to reduce the width of a highway between fences below 30 *ft.* Assuming that all the land between fences is part of the highway, the proviso to s. 51 covers the case where an encroachment though more than 15 *ft.* from the centre of the metalled part lies within 30 *ft.* from the fence opposite the encroachment.

In connexion with summary proceedings reference may also be made to s. 72 of the Highway Act, 1835, making it an offence to lay timber, stone, hay, dung, lime, soil, etc., on the highway " to the injury interruption or personal danger of any person travelling thereon " and to the provisions in s. 73 by which the highway authority may obtain the order of a justice to remove any matters so laid.

[3] A fee is payable on the grant of the authority, but otherwise there is little or no practical difference between a relator and an ordinary action in the Chancery Division.

Section 69 of the Towns Improvement Clauses Act, 1847 (which is in force in boroughs, urban and rural districts) contains powers for dealing with projections from houses, including gates, walls and fences which obstruct the safe and convenient passage along any street.

Self-help

The power of preventing and removing obstructions is included in the power of maintaining and repairing a highway (*R.* v. *Heath* (1865) 29 J.P. 452). Where a highway authority can show affirmatively that the highway is obstructed they will not be restrained by injunction from removing the encroachment and obstruction.

" Where the court has decided that the Plaintiff's erection was an encroachment and a wrongful thing amounting to a nuisance, it would be wrong at his suit to restrain the public body from abating the nuisance " per Jessel, M.R., in *Bagshaw* v. *Buxton Local Board of Health* (1875) 1 Ch. D. at p. 225; 40 J.P. 197.

In *Harris* v. *Northants C.C.* (1897) 61 J.P. 599, Byrne, J., said " I am of opinion they have such a power (to abate an encroachment) whether the soil is vested in them or not . . . I think they have such power under s. 11 of the Local Government Act, 1888, and further I consider that apart from that enactment they would have the power upon the principles laid down in the case of *Bagshaw* v. *Buxton Local Board of Health.*" He went on to say that the right was not limited to the *via trita.* It will be recalled that by virtue of s. 11 of the Local Government Act, 1888, county councils " shall have the same powers as a highway board for preventing and removing obstructions and for asserting the right of the public to the use and enjoyment of the roadside wastes."

In view of the powers and duties which are placed upon all local authorities (including borough, urban and rural district councils and county borough councils) by s. 26 of the Local Government Act, 1894, as to rights of way (which is not limited to footpaths) and roadside wastes, it seems clear that the decision in the *Northamptonshire County Council* case will apply to any authority removing an obstruction to a public highway.

Where there is any doubt whether an encroachment has taken place, the authority should obtain a judicial decision, resorting to abatement only when the issues are clear cut. The following is an extract from the judgment of Lord Russell, C.J., in *Reynolds* v. *U.D.C. of Presteign* (1861) 1 Q.B. 604:

> " Where the question is one of doubt or difficulty, I think a judicial decision should be obtained by the public authority. If they proceed to act, professing to prostrate the encroachment under the powers of the statute, without having obtained such a decision, they run a considerable risk. The burden lies upon them of justifying their action; and, if they fail to justify by reason of their being unable to shew that there was an obstruction or encroachment, they become liable to damages for trespass . . . With respect to encroachments on or obstructions to highways, it is undoubtedly true that there are statutory provisions . . . but, in my opinion, those provisions are not intended to be exclusive. They are provisions not necessary but supplementary to the right to remove . . ."

Notice of removal is not essential (*Lemmon* v. *Webb* (1895) A.C. 1; 59 J.P. 564) and to give a warning of the actual date when removal was to be effected would usually be unwise and promote a possible breach of the peace. The authority should however give the owner an opportunity to put matters right and indicate their intention to abate the nuisance themselves in default (*Urban Housing Company Ltd.* v. *Oxford City Council* (1940) 104 J.P. 15).

Where an authority abate a nuisance, they are entitled to recover the costs of so doing from the person guilty of the encroachment. (*Louth U.D.C.* v. *West* (1896) 60 J.P. at p. 601). Here a highway authority reinstated an old highway ditch and filled up a new one made by the defendant which was an encroachment on the highway. Wills, J., said " it was not contended that they had no right to abate this encroachment as they have done. It is said, however, that the expense incurred in the performance of that statutory duty ought not to come out of the pockets of the defendant who caused the nuisance but out of the rates. I can see no reason whatever for coming to any such conclusion."

An authority who issue process to recover the costs of abating a nuisance run the risk of provoking a counterclaim for trespass, and recovery of costs should only be sought at law if the obstruction or encroachment is absolutely clear cut and indisputable, about which it is not always easy to be certain.

The sort of cases in which an authority will be well advised to resort to self-help are:—

(*a*) Cases where the obstruction is too trivial to warrant an indictment or High Court action.

(*b*) Cases where summary proceedings cannot be taken because of the time factor or because the encroachment is more than 15 *ft.* from the centre of the highway.

Before taking the law into its own hands the authority should be satisfied that an encroachment can be proved in court if need be, and should not act precipitately but give the defendant a reasonable chance to put matters right. J.K.B.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Hallett and McNair, JJ.)

R. *v.* EVANS

November 12, 1956

Criminal Law—Sentence—Persistent offenders—Statutory notice—One conviction and sentence of preventive detention only set out—Criminal Justice Act, 1948 (10 & 11 *Geo.* 6, *c.* 58), *s.* 23.

APPEAL against sentence.

The appellant was convicted at Bridgend magistrates' court of the larceny of a pedal cycle, and was committed to Glamorganshire quarter sessions for sentence. There it was proved that there had been served on the appellant and on the court a statutory notice under s. 23 of the Criminal Justice Act, 1948, which referred to one conviction only, in the following terms: " Glamorgan Assizes, March, 1951, Larceny:—Four cases of stealing pedal cycles. Larceny of tools. Seven years' detention." He was sentenced to eight years' preventive detention.

Held, that s. 23 (2) of the Criminal Justice Act, 1948, did not have the effect of rendering the notice valid. The only effect of that subsection was that, if the prisoner should dispute an earlier conviction set out in the notice, it would not be necessary to give any further evidence of that conviction, because the sentence of corrective training or preventive detention would itself prove it. To be valid, however, a notice must set out all the previous convictions and sentences on which it was intended to rely as qualifying the prisoner for preventive detention, corrective training, or a supervision order, as the case might be. The notice in the present case was, therefore, invalid and the sentence could not stand, but must be varied to one of eight years' imprisonment.

Counsel: *McLellan* for the appellant; *Ithel Davies* for the Crown.

Solicitors: *Registrar,* Court of Criminal Appeal; *W. Rosin,* Bridgend.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PRACTICE NOTE ON INDICTMENTS

November 12, 1956.—LORD GODDARD, C.J., laid down the following practice to be followed with regard to indictments. (1) The prosecution are entitled to require that an indictment should be settled by counsel. Clerks of Assize and clerks of the peace can require an indictment to be settled by counsel when they think fit. (2) Where an indictment or draft indictment, settled, but not signed, contains counts which differ materially from, or are additional to, the charges on which the accused was committed for trial, the clerk of Assize or clerk of the peace shall, except where the indictment has been settled by counsel for the prosecution, notify the prosecution and the accused of the fact, and, where the indictment has been settled by counsel for the prosecution, notify the accused of the fact, as soon as may be. (3) On or after commission day at Assizes, or the day before the sessions open at the Central Criminal Court or at quarter sessions, or earlier at the discretion of the clerk of Assize or clerk of the peace, facilities shall be given to the prosecution and to the accused to inspect the indictment, or draft indictment if the indictment has not then been signed. If on those days the indictment has not been drafted, such facilities shall be given as soon as possible.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

APARTHEID IN ACTION

By JOHN MOSS, C.B.E.

During two visits to South Africa I have seen the gradual extension of the doctrine of 'apartheid' or 'separation' in all phases of the life of the country. My last most vivid experience was to listen to a stormy debate in the Joint Session of the two Houses of the Union Parliament when considering the Bill aimed at taking the Cape coloured from the Common Roll of electors,—Government supporters speaking in Afrikaans, opposition members speaking in English. The Cape coloured people must be distinguished from the natives or Bantu. They have always considered themselves to be superior to the latter and in many respects have been treated on the same basis as the whites. The South African speaks of the 'European' and the 'Non-European' even although the Europeans or whites may have lived in the Union for several generations.

The present Nationalist government has been striving since it came into power to increase the domination of the whites over both the Cape coloured and the natives. The Separate Representation of Voters Act, 1951, altering the constitutional position of the Cape coloured, was held by the Court of Appeal to be *ultra vires* under the South Africa Act. The government then took steps to get two Acts passed to resolve the position. The first was an Act increasing the number of Judges in the Court of Appeal from five to 11 and requiring all 11 to sit in hearing any case in which the validity of an Act of Parliament was challenged. Those who have been appointed as Judges of this court are no doubt suitably qualified, but I heard criticism of the fact that some of those who had been appointed were junior and in the view of some legal people, less competent than others who had been overlooked. It has been stated by critics that an overriding qualification was to be an ardent supporter of the Nationalist party.

The second Act enlarged the Senate from 48 to 89 members and devised a new system of nomination and election which resulted in the Nationalists having an overwhelming majority over the United party members and ensuring a certainty of a two-thirds majority when both Houses were sitting together. Now that the reason for this extension has been achieved through the passing of the South Africa Act Amendment Act many are asking whether the new senators will now retire to their farms. But it seems unlikely that they will vote themselves out of existence, bearing in mind the emoluments they receive for performing their not very arduous duties.

The United party took steps to test the validity of the Amendment Act in an action commenced, obstensibly, by two coloured men. They alleged that Parliament had no right to validate the Act of 1951, which had been held to be illegal by the Supreme Court, by the South Africa Act Amendment Act which was passed in the joint session of the two Houses last March. It was argued that the effect of this Act combined with the Senate Act was to destroy the guarantee contained in the entrenched clauses of the South Africa Act; and that it was enacted as part of a legislative plan to remove coloured voters from the common voters' list in the Cape province, and in violation of the entrenched clauses to disqualify coloured persons, in future, from registering. It was further argued that the Act was invalid because it was passed contrary to the entrenched clauses, since the Senate, constituted in terms of the Senate Act, whose members took part in the joint sitting, was not duly constituted and was not one of the Houses of Parliament within the meaning of the South Africa Act. But the Supreme Court refused to declare the Act to be unconstitutional.

Similar action has been taken with regard to elections for the provincial council and it was suggested by the council, which controls local government affairs, that the same policy should also be adopted for local government elections. The Cape Provincial Council made a draft ordinance which would have had this effect. But following strong objection by the local authorities and in the public press the proposal was withdrawn and, according to the present views of the Administrator, who is the chairman of the council, no action will be taken until the Group Areas Act has been fully implemented when the various races will have direct representation on local authorites governing their own areas. This may well be a long time ahead. Mr. N. C. Havenga, who was Minister of Finance in the Malan government, has described the decision to deny direct representation of Cape coloured voters in the Cape Provincial Council as 'a shameful act'—so it is apparent that there are still some members of the Nationalist party who do not go so far as the present Government.

APPLICATION OF APARTHEID

One of the first things a visitor to South Africa notices is the practical application of the principle of apartheid. As a white person he buys his stamps at a separate counter in the post office; he travels in a separate compartment on the trains; in many districts he travels on a separate bus or sometimes the non-white may be allowed to ride upstairs in the same bus; he sits on a separate seat in the park; he uses a different waiting room at the station and in a large station will enter by a different door; he will certainly take his ticket at a different counter; probably the non-Europeans will not be allowed to bathe in the same section of the beach.

When the post offices were divided into two sections—white and non-white—an Indian contended that the division was illegal as not authorized by Parliament. But the Court held that the separation of the races in this way was valid on the assumption that the service provided was equal for each. In another case the Court held in 1953 that the railway authorities at Cape Town had not provided waiting rooms and lavatories of equal standard for all races and that a native who used accommodation provided for whites could not be convicted of a crime. Parliament, with its Nationalist majority, soon altered

this, and passed the Reservation of Separate Amenities Act which has given wide powers to all public officials to divide public services on racial lines without requiring equality of service.

In another case a local transport board deprived an Indian taxicab owner of his licence on the grounds that it was reasonable that white people should be conveyed only by white taxi drivers and black or brown people by non-whites. On appeal, the Transvaal Provincial Division of the Supreme Court refused to disturb the Board's decision. But on appeal to the Appellate Division the decision was reversed on the grounds that the Transport Act did not empower a local board to do an unreasonable thing such as to decline to renew a licence because the applicant was an Indian. Soon afterwards Parliament passed an amending Act to legalize such action by a transport board. In another case it was held that a local transport board could refuse a licence to an Indian who provided a bus service in an African township on the grounds that buses serving an African native area should be provided by Africans.

RACIAL ZONING

In 1951 was passed the Group Areas Act aimed at dividing every urban area into racial zones in which only white or black or brown people could live or trade. The provision of native townships is normally a matter for the local authority but the government took care to see that their wishes would be enforced by giving the decision in such matters to a Board constituted by the government. There was much publicity in the national press, including newspapers in this country, as to the compulsory removal of natives and Asians from the Western Areas in Johannesburg. I have seen these areas. Much of the housing there is deplorable and unfit for human habitation. The houses to which the persons were removed were sanitary and decently built. But they are some distance from the city and until public transport services are fully developed those living there must suffer hardship in travelling to work in the city as almost all the men and many of the women do. Another serious grievance is that many of the people owned the freehold where they lived—on which some of them had erected good houses—but in the new area the occupiers cannot own the freehold. Another serious difficulty to the Asians is that when they were allowed to live in the same district as the African natives and even near also to whites their shops were open to both. But they have lost much of their business, and sometimes their livelihood by being restricted to serving Asians only.

Mr. Strydom, the South African Prime Minister, on his recent visit to this country for the Prime Ministers' Conference complained that for some years people in the United Kingdom had been given a false and distorted picture of South Africa and of its coloured policy. He said that at least 90 *per cent.* of the white population of South Africa were determined, whatever the consequences, to ensure the continued existence of the white or European race in South Africa; and if the whites, far outnumbered as they were by the non-whites, allowed control of their country to pass out of their hands, they would be doomed either to leave or to be absorbed by the huge majority of blacks. No-one in South Africa wants black domination but the general feeling of those who do not support the Nationalist party seems to be that the policy now being adopted will lead to serious trouble between the races; as well as being unfair to the small minority of the African natives who will not be able to reach the educational attainments for which they are fitted and through which they could make a useful contribution to the well being of the country as a whole.

BLOOD TRANSFUSION

Apartheid is going right through the every-day life of the country. For instance, new regulations for the control of blood transfusion services provide that the blood of Europeans and non-Europeans must be kept separate in every stage of its preparation for transfusion. The blood of non-Europeans must be kept in bottles bearing a label with a black border. Blood taken from Europeans must be kept in bottles with labels with a white border. Even the records of blood taken from Europeans and non-Europeans must be kept separate. The medical director of the Blood Transfusion Service has stated that any such discrimination cannot be justified on scientific grounds and the chairman of the service said the regulation would make South Africa ' the laughing stock of the world.'

PROHIBITIONS AGAINST NATIVES

Under the recently passed Population Registration Act any person who in appearance is obviously a member of an aboriginal tribe or race in Africa will be classified as a native. The change in the law will affect those who live as coloured, as distinct from natives, and have been accepted as coloured but are near enough to the borderline of colour to be native in appearance. Previously a native was defined, by law, as a person who was in fact or was generally accepted as a member of any aboriginal tribe or race and a coloured person was defined as a person who was not a white person or a native. The new law overrules a decision of the Court that appearance could be deceptive. It has been suggested by a legal authority that through the change in the law it will be possible for the same man to be classified as a native under one Act and to be regarded as a coloured man for the purposes of another Act.

Under the Prohibition of Mixed Marriages Act, no European may marry a person classed as of different colour. Such persons may also be imprisoned after conviction if they live together without marriage; and a priest who marries them is liable to prosecution.

ACCESS TO THE COURTS

The Native Administration Act of 1927 gave the Governor-General power to remove natives from one district to another when it was thought in the public interest to do so. An amendment to this Act in 1952 made it impossible for a banishment to be delayed by recourse to the courts. The official explanation of this was that if a banishment order was suspended while court proceedings occurred the native concerned could go on making trouble in the area where he was. Now the Natives (Prohibition of Interdicts) Act applies the same principle to natives who are ejected from their homes in urban areas. There is, however, a saving clause whereby if after a native has been ejected and a court is satisfied that his ejection was wrong it can order his return to his old home with compensation.

The Natives (Urban Areas) Amendment Act gives urban authorities arbitrary powers without trial or inquiry, to banish natives whose presence they consider " detrimental to the maintenance of peace and good order." Another Act provides that a native ordered to leave one place and go to another cannot obtain a stay of execution from the courts. The Urban Areas Act further provides that native political offenders who disobey banishment orders imposed by native commissioners may be sent to work-colonies for an indefinite period. Previously work-colonies were intended only for idle or disorderly natives who must be committed to them by a magistrate after a trial.

APARTHEID IN LOCAL GOVERNMENT

The Provincial administrator informed the Cape Town city council that complaints had been made at the lack of provision of separate amenities for the different race groups; that certain seaside beaches which had normally been frequented by Europeans were being invaded and encroached by non-Europeans; that Europeans often had to share bathing facilities

with non-Europeans; that residents were perturbed at the manner in which non-Europeans were making use of promenades, pavilions, children's playgrounds, public benches and lawns near well-known seaside resorts.

The council have stated that the provision of separate amenities of all kinds must be a long-term project involving millions of pounds but arrangements will be made for the principle of apartheid to apply to libraries, booking and licensing offices and the letting of municipal halls with separate toilet facilities. It has also been decided to appoint non-Europeans to serve non-Europeans in their offices.

In Bloemfontein the city council has decided to exclude non-Europeans from the zoo on certain days. They have also refused to consider the employment of non-Europeans as drivers and conductors of buses. Non-Europeans have been banned from attending the new Free State stadium. The Cape Traffic Control Committee has made representations to the city council about apartheid in buses, including the reservations for Europeans of the lower deck on trackless trams and a division of the upper decks into European and non-European. When I was in Cape Town the council was objecting to this requirement but no doubt it will have to comply in due course. The Administrator has power to implement apartheid regulations if local authorities do not do so. Apartheid applies on the public transport at Johannesberg and this is run at a loss. On the other hand the Cape Town transport runs at a profit. It has been stated that if Johannesberg had no apartheid, fares could be reduced and a better service given. In Cape Town, up to the present, all races have been allowed to use the same vehicles. In Johannesberg 95 *per cent.* of the vehicles carry Europeans only and five *per cent.* carry non-Europeans. It is considered that in Cape Town apartheid will result in increased fares. The coloured people make up more than half of Cape Town's population. The situation might well arise where "white" seats would remain empty while coloured passengers stood in a crowded bus. The Institute of Race Relations has argued that apartheid would, by its very nature, create hostility and irritation between passengers of different races. It has further said that conductors might have difficulty in determining the race of a passenger.

Apartheid even extends to the press gallery in a city council chamber. Nationalist members of the Johannesberg city council have complained that although provision has been made in the gallery for separate accommodation for non-European newspaper representatives, to reach their Press box non-European reporters have to use the same doorway as European reporters. They asked for a separate entrance. Parliament does not, however, do this as there is only one entrance into the House of Assembly for both whites and non-whites and so far no complaints have ever been made about this from the Nationalist side of the House.

MAGISTERIAL LAW IN PRACTICE

The Western Daily Press. October 15, 1956

MAN HE HIT WAS P. C.

Gaol for beggar at Bristol

John Henry Murphy (52), *of no fixed abode, struck a man who refused to give him money. He did not know that the man he hit was Police Constable Henry King in plain clothes.*

Murphy was sentenced to three month's imprisonment at Bristol magistrates' court on Saturday when he pleaded guilty to charges of begging and assault.

Chief Detective Inspector George Aston told the magistrates that police constable King was off duty in the Horesfair when Murphy approached him and said "I am a TB man, spare me a copper." The officer told him to go away but Murphy immediately turned round and struck him. The officer then arrested him.

Murphy told the court he had been drinking. He was said to have a "formidable" list of 30 *convictions, to be unemployed, sleeping rough and receiving treatment for tuberculosis.*

A person convicted of an assault on any police constable when in the execution of his duty is liable to a fine not exceeding £20, or to imprisonment for a term not exceeding six months. On a second conviction within two years the maximum term of imprisonment is nine months (s. 12 of the Prevention of Crimes Act, 1871).

The defendant cannot claim to be tried by a jury. Section 25 (1) of the Magistrates' Courts Act, 1952, provides that "where a person who has attained the age of 14 is charged before a magistrates' court with a summary offence for which he is liable, or would if he were adult be liable, to be sentenced by the court to imprisonment for a term exceeding three months, he may, subject to the provisions of this section, claim to be tried by a jury, *unless the offence is an assault or an offence under section one of the Vagrancy Act*, 1898."

It is no defence that the defendant did not know that the person he assaulted was a constable, or that he was acting in the execution of his duty. (*R.* v. *Forbes and Webb* (1865) 10 Cox 362; *R.* v. *Maxwell and Clanchy* (1909) 73 J.P. 176).

[At p. 650, *ante*, we commented on a case heard at Salisbury, assuming from the report in *The Western Daily Press* of August 21, 1956, that the defendant was pushing the car because the engine was not in working order.

We have now been informed by the assistant chief constable of Wiltshire that evidence was before the court that the defendant was sitting in the car with the engine running. It is therefore quite clear that the justices were correct in their decision.—*Ed., J.P. and L.G.R.*]

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

DETENTION CENTRES

Mr. C. Royle (Salford, E.) asked the Secretary of State for the Home Department in the Commons how many detention centres it was proposed should be opened by the end of 1957 and 1958 respectively.

The Secretary of State for the Home Department, Major Lloyd-George, replied that three detention centres were now in use, two for junior boys at Kidlington, Oxfordshire, and Foston Hall, Derbyshire, respectively and one for senior boys at Goudhurst, Kent. A second senior centre was expected to be opened at Werrington, Staffordshire, by the end of March, 1957. He intended to provide a junior and a senior centre in the North of England, but was not yet in a position to say what funds would be available for that purpose in the financial year 1957–8.

SPRING-CLIP KNIVES

Capt. R. A. Pilkington (Poole) asked the Secretary of State whether any decision had yet been reached to prohibit the import of flick-knives from Italy.

Major Lloyd-George said that he and the President of the Board of Trade had been in consultation with the representative trade associations about the possibility of cutting off the supply of those knives to young persons by voluntary action on the part of traders. As a result of those consultations, they had decided that the problem could best be dealt with in that way rather than by legislation or prohibition of imports. He was confident that all traders, including manufacturers, importers, wholesalers and retailers, whether members of trade associations or not, would co-operate by refusing to handle those knives, except to the extent that they were supplying them to customers known to have some legitimate use for them.

MR. JOHN JAMES

Mr. Donald Johnson (Carlisle) asked the Secretary of State whether he was aware that on October 30, 1958, Mr. John James of Stonehouse, Little Aston Park, Sutton Coldfield, had been sentenced to three months' imprisonment at Birmingham Central police court and had not regained his liberty until five years later when he had escaped from St. Andrew's Mental Hospital, Northampton; and if he would state the particulars of his offence and give the authority under which Mr. James had been detained for so disproportionate a time to that of his sentence.

Major Lloyd-George replied that Mr. James had been bound over to be of good behaviour for 12 months in the sum of £50 and was ordered to find sureties in £25 each with the alternative of three months' imprisonment. He had been unable to find the requisite sureties and had been committed to prison, where on December 8, 1948, he had been certified insane by two legally qualified medical practitioners and then removed to Winson Green Mental Hospital

under a warrant of removal made under s. 2 of the Criminal Lunatics Act, 1884. On January 3, 1949, an order was made by a justice of the peace under s. 7 (2) of the Act for his detention as a Health Service patient on the expiry of his sentence. On the application of his father an order was made on March 4, 1949, under s. 59 of the Lunacy Act, 1890, for his transfer to St. Andrew's Hospital, Northampton.

HOMICIDE BILL

After two days in Committee of the Whole House, the Homicide Bill has emerged without amendment.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, November 27

POLICE, FIRE AND PROBATION OFFICERS REMUNERATION BILL—read 3a.

Thursday, November 29

SHOPS BILL—read 2a.

EXPIRING LAWS CONTINUANCE BILL—read 2a.

PERSONALIA

APPOINTMENTS

Mr. James Beveridge Thomson, puisne judge in Malaya, has been appointed Chief Justice of the Federation in succession to Sir Charles Mathew, who is retiring. Mr. Thomson, who is 54, was appointed a puisne judge, Fiji, in 1945, and transferred to Malaya in 1948.

Mr. Rudolph Lyons, Q.C., who last November was appointed recorder of Sunderland, is to be recorder of Newcastle-on-Tyne, in succession to Sir Godfrey Russell Vick. Mr. Denis Hicks Robson, Q.C., recorder of Middlesbrough, has been acting recorder of Newcastle since Sir Godfrey became a county court judge for the Bedfordshire district. Mr. Lyons, who is 44, is already known on Tyneside, for he has been practising on the North Eastern circuit. He was called to the bar in 1934 and took silk in 1953.

Mr. Richard Haddow Forrest, Q.C., has been appointed recorder of Salford. Mr. Forrest was called to the bar in 1932 and took silk three years ago.

Mr. Neville M. G. Faulks has been appointed recorder of Deal, Kent.

Mr. John Cuthbert Brooke-Taylor, a partner in a firm of solicitors at Bakewell, Derbyshire, has been offered the appointment of clerk to Northampton county borough justices. Mr. Brooke-Taylor was one of three short-list candidates considered by Northampton magistrates' courts committee for the position. His appointment is subject to satisfactory medical examination and the approval of the Secretary of State. Mr. Brooke-Taylor was educated at Cheltenham College, and entered into articles in 1934, but these were interrupted by the outbreak of war. Commissioned in the Sherwood Foresters, Mr. Brooke-Taylor was captured in Northern France. During his internment he passed his finals examination with distinction. After repatriation, he served with Eastern Command Legal Aid Section and was demobilised in February, 1946. A month later he went into private practice. His father, who died last year, had been part-time clerk to Bakewell petty sessional division since 1919. He himself has sat occasionally as clerk to Bakewell magistrates. Mr. Brooke-Taylor will succeed Mr. L. K. Lodge, *see* our issue of October 27, last. Mr. Lodge, who planned to retire on December 31, next, has agreed to postpone his departure until March 31, 1957. Mr. Brooke-Taylor will take up his new position on April 1, 1957, subject to the necessary approval.

Mr. H. C. Allen, deputy clerk to Cannock, Staffs., urban district council, has been appointed clerk to succeed Mr. W. C. Speedy, as from April 1, 1957. Mr. Allen has had previous service with the urban district councils of Chislehurst and Sidcup, Kent, Dagenham, Essex, Rayleigh, Essex and Herne Bay, Kent. Mr. Speedy is retiring on March 31 next year, having held the clerkship since April 1, 1933.

Mr. Desmond Allchin, at present chief inspector of weights and measures for the city of London, has been appointed clerk and superintendent of Spitalfields Market and London Fruit Exchange. He will commence duties on January 1, 1957. Mr. John C. Serjeant has been appointed to succeed Mr. Allchin as chief inspector of weights and measures for the city of London on the same date.

Mr. Sidney F. Bartlett of Basingstoke Hants., has been appointed president of the Rating and Valuation Association for the ensuing year. Mr. Bartlett had a long and distinguished career as a local government officer and was president of the Association during the war years. His record and work for the Association is recognized in this invitation to be president during what will be the Association's 75th year.

Mr. N. O. G. Wooler, M.A., at present a probation officer in the service of the Kent combined probation area attached to the Dartford petty sessional division, has been appointed probation officer for the city of Bath with effect from January 1, 1957. Mr. Wooler's services will be shared between the city and the Somerset combined probation area. He will work from an office in Bath. This is an additional appointment and Mr. Wooler does not therefore replace a former occupant of the position. Mr. Wooler has been a probation officer since 1954. From 1948 to 1952 he was a schoolmaster in Cyprus and from 1952 until 1954, the date of his appointment to the probation service, he was undergoing a Home Office training scheme.

Mr. T. C. Williams has been appointed chief constable of the Isle of Ely and Huntingdonshire. Mr. Williams holds at present the rank of chief inspector and is commandant of the Home Office Training School for the North-East at Newby Wiske, Northallerton, Yorks. He was appointed commandant in January, 1955. Before going to Newby Wiske he served on the staff of the Police College at Ryton-on-Dunsmore in Warwickshire, and served with the Metropolitan Police College at Hendon. He is a barrister-at-law. During the war he served with the R.A.F. and was for some time stationed in Yorkshire. Mr. Williams will succeed Lieut.-Colonel J. C. T. Rivett-Carnac, on the latter's retirement in April, 1957.

RESIGNATION AND RETIREMENTS

Mr. Nicholas L. C. Macaskie, Q.C., recorder of Sheffield for 16 years, is to resign after the January quarter sessions. A former recorder of York, Mr. Macaskie, who was with the Allied Control Commission at the end of the war, took part in the trials of the German war leaders. At present he is chairman of the Appeals Tribunal under the Road and Rail Traffic Act. A former practising barrister, leading the North-Eastern circuit, he is Master of the Library, Gray's Inn. His father, the late Mr. S. C. Macaskie, was recorder of Sheffield in 1902.

Mr. G. R. Blanco White, Q.C., is retiring as Croydon recorder after 16 years in that office. He will continue to sit as a divorce court commissioner.

Superintendent William Vincent Doolan, of Neath division of Glamorgan constabulary, has retired, after 47 years' service. Mr. Doolan was one of the only 28 chief constables of England and Wales for whom a special Act of Parliament—the displaced Chief Constables Act, 1946—was passed in view of mergers which were then pending. He was the only chief constable in Wales affected by it. He ceased being chief constable of Neath borough force when they were merged with Glamorgan county police on January 1, 1947. Mr. Doolan then became superintendent of Neath division, the position he had held before becoming chief constable of Neath; but the Act provided that he and the other 27 displaced chief constables should be treated as chief constables for the rest of their service and during retirement and should be given all the privileges, including pension rights, attached to the position. Technically he is still a chief constable.

Mr. Claude Royle, coroner for the borough of Scarborough, Yorks., is to resign owing to ill-health. His resignation will probably take effect from the end of the year and applications are to be invited for the appointment of his successor. He succeeded his father, the late Mr. George Royle, as coroner in 1929, having been appointed his deputy earlier that year. Admitted in 1911, Mr. Royle is the sole surviving partner of Royle and Son, and between the wars he was well known as an advocate. Mr. Royle is 70, and has been in ill-health for the past three years.

OBITUARY

Mr. J. G. Drew, O.B.E., town clerk of Brighton, Sussex, from 1938 to 1953, has died at the age of 61. Mr. Drew was admitted in January, 1920. In 1927 Mr. Drew became an assistant solicitor to Brighton corporation and was appointed deputy town clerk in 1934. He became town clerk in 1938, but, owing to the ill-health of Mr. J. H. Rothwell, Mr. Drew was in effect acting town clerk for some time before he took over the post officially. He was awarded the O.B.E. in 1943.

Mr. Horace Percival Hind, O.B.E., chief constable of Bath, has died in hospital at the age of 61. He was awarded the O.B.E. in 1942.

Insurers are busy drawing our attention
To the attractions of a pension
That can now be enjoyed
By the self-employed,
Which will at last enable us to retire
Before we actually expire.
But I'm still waiting for the scheme to arrive
Which will enable me to retire at forty-five.

J.P.C.

MISCELLANEOUS INFORMATION

THE PREVENTION OF DAMAGE BY PESTS (THRESHING AND DISMANTLING OF RICKS) REGULATIONS, 1950

The following press notice has been issued by the Ministry of Agriculture, Fisheries and Food:

A farmer and a threshing contractor were recently summoned for failing to fence a corn rick before commencing threshing. The presiding magistrate said the regulations had been made for the farmer's own protection and should be observed. He asked that publicity should be given to the case, as it did not seem that the regulations were as widely known as they might be.

Farmers and threshing contractors are reminded that under the Prevention of Damage by Pests (Threshing and Dismantling of Ricks) Regulations, 1950, before a rick is dismantled for threshing or any other purpose it must be fenced to prevent the escape of rats and all practicable steps must be taken to destroy rats and mice escaping from the rick. If the rick is threshed or dismantled before November 1 in any year, and it consists of a crop harvested that year, it is not necessary to fence it but steps must be taken to destroy rats and mice escaping from it.

The maximum fine for breach of the regulations is £20 for a first offence and £50 for a subsequent offence.

ANNUAL REPORT OF THE BOARD OF CONTROL

The annual report of the Board of Control to the Lord Chancellor refers briefly to the condition of mental hospitals and other institutional accommodation for the mentally ill (but not for the mentally defective) and to the care of such patients. On December 31, 1955, there were 149,516 patients under care under the provisions of the Lunacy and Mental Treatment Acts. The number of patients in mental hospitals excluding former public assistance institutions decreased by 1,047 during 1955 to 139,440. The average annual increase in patients resident during the past five years was 850. Calculated upon standards of space prescribed by the Ministry of Health these hospitals provide accommodation for 123,175 patients or 550 less than at the end of 1954. Out of this accommodation, 1,700 beds were not available for use; 704 being used for other services, 83 awaiting renovation or repairs and 913 unusable because of shortage of staff. The hospitals were overcrowded to the extent of 17,965 patients, or 967 less than at the end of 1954. Admissions to all institutions and private single care were 83, 289 in 1955 as compared with 76,650 in 1954. The proportion of admissions of voluntary patients to designated mental hospitals continues to show a steady increase. There were 18,059 voluntary during 1946 or 50·8 *per cent.* of the total. During 1954 this had risen to 51,247 or 71·5 *per cent.* and during 1955 to 58,927 or 75 *per cent.* The proportion of patients admitted under certificate continues to fall though until 1954 the actual number was increasing. During 1953 there were 19,645 (29·1 *per cent.*), during 1954 19,330 (27 *per cent.*) and during 1955 18,286 (23 *per cent.*) patients admitted under certificate. Of the total admissions in 1955, 41·6 *per cent.* were re-admissions, as compared with about 40 *per cent.* in 1954: there was little difference between the re-admission rates for voluntary and certified patients.

PETROLEUM PRODUCTS REGULATIONS

By Defence Regulations (No. 3.) Order 1956, S.I. 1956, No. 1693, the scope of regulations 55, 55AA, and 55AB is extended to confer powers with regard to petroleum and petroleum products.

BRISTOL CORPORATION FINANCES, 1955–56

The result of the revaluation in Bristol was to increase the rateable value of the city by 69 *per cent.* to a total of £6,700,000. While domestic properties (revalued on the basis of 1939 values) increased by only 35 *per cent.*, commercial properties rose by 117 *per cent.* and industrial hereditaments by 174 *per cent.*

These facts are given in the report of city treasurer T. R. Johnson, F.I.M.T.A., F.S.A.A., on the accounts of the corporation for the year ended March 31, 1956. He shows that the result of the year's working was satisfactory in one respect: an originally estimated closing balance of £228,000 turned out in fact to be £340,000, even after making a contribution of £50,000 to the Bristol capital fund, such item not having been included in the original estimates. The corporation have pursued a policy of reduction of balances and the amount now held seems little enough in relation to a total expenditure of £17 million.

Bristol no doubt is awaiting hopefully the Government pronouncement on the result of its examination of local authority finance. For the present, however, the city receives no equalization grant and 51 *per cent.* of its net expenditure has to be met from rates: even so, this is an improvement on the year 1939–40 when rates were called upon to meet 63 *per cent.* of the bill. In terms of rates per week the ratepayer of 1955–56 in a house of average rateable value paid 8*s.* 3*d.* —not an excessive burden in the present era of good wages.

The corporation itself paid out during the year £7½ million in wages and associated charges to its 15,000 employees of whom over a third were engaged in the education service.

It is natural that a large corporation such as Bristol should incur substantial capital expenditure: in 1955–56 alone it was £8½ million. Net loan debt at the year end was £63½ million of which £36 million was in respect of housing.

At March 31 the corporation owned 35,000 dwellings (there were 124,000 assessed houses and flats within the city boundary). The housing account was run with the minimum of assistance from public funds and it possessed a surplus at the year end of £82,000. This result can be largely attributed to the revised scheme of rents which was partially commenced in 1953–54 and operated in its entirety in 1955–56. The scheme operates from a system of basic rents fixed for the various types of houses, adjustments of such basic rents being made as follows:—

1. Additions for persons earning over £9 a week with a maximum addition for persons earning £13 a week and over.
2. Additional charges for sub-tenants and lodgers.
3. Rebates from basic rents where gross rents (*i.e.*, including rates) exceed 1/6th of income.

The average cost of repairs per dwelling was £11 4*s.*, and the credit balance of the housing repairs fund was equal to about one year's expenditure on repairs.

Bristol has invested four fifths of its superannuation fund surpluses in gilt-edged securities. Investments totalling £3,400,000 had depreciated by £500,000 at the end of the year and doubtless Bristol will be considering the advisability of following Manchester and obtaining power to invest part of its funds in industrial equities.

ROAD CASUALTIES— AUGUST AND SEPTEMBER, 1956

Four hundred and sixty-three people were killed and 5,584 seriously injured on the roads of Great Britain in September. The number

slightly injured was 17,764, making a total for all casualties of 23,811.

These figures, which are provisional, show a decrease of nearly 2,000 compared with the total for September 1955. There were 36 fewer deaths and 374 fewer cases of serious injury. Slight injury cases were down by 1,517.

In August casualties were much heavier this year than last. Deaths numbered 568, an increase of 69; the seriously injured, 6,456, an increase of 232; and the slightly injured 21,491, an increase of 999.

The provisional totals for the nine months January to September, are:—

Killed ..	3,934	an increase of	183
Seriously injured	45,689	,, ,, ,,	980
Slightly injured	151,774	,, ,, ,,	4,920
Total	201,397		6,083

POST HASTE

This is the season when the Post Office comes into its own. Between now and Christmas the collection and delivery of postal packets will be reckoned in astronomical figures, far beyond the capacity of the regular staff. Thousands of men and women, boys and girls, will be enrolled as temporary postmen; and individuals in civilian clothes, distinguished only by an official armband and a heavily-laden sack, will be a familiar sight in the streets. It is the boast of the postal organization that, however heavy the traffic, all deliveries will take place according to schedule; it is remarkable that the enormous mass of Christmas cards, letters and parcels, the movement of which is concentrated into three short weeks, interferes so little with the ordinary postal traffic, which continues much as usual during this busy period.

It is timely to observe that we are within a few months of the tercentenary of Cromwell's Post Office Act of 1657—the first comprehensive attempt to regulate, by statute, the British postal service. The Act created the office of Postmaster-General, established a Government monopoly for the carriage of letters, and prescribed the rates of postage, both inland and foreign. But the Act did not limit itself to wholly beneficent purposes; the preamble emphasized the importance of a centralized system, not only for the promotion of trade, but as a means of discovering and preventing "many dangerous and wicked designs which have been and are daily contrived against the peace and welfare of this Commonwealth, the intelligence whereof cannot well be communicated but by letter of escript." In other words, the system provided a useful opportunity for postal censorship—a much-detested institution which went out with the Restoration and was not revived until the 1914 War.

Cromwell's Act is an important landmark, but by no means represents the first attempt in English history to organize the service on a national scale. In 1591 a proclamation of Elizabeth I prohibited the carriage of letters to and from "the Countreys beyond the seas" except by duly authorized messengers. Eighteen years later James I extended control to the inland post—apparently as a means of raising additional revenue. In 1635 Thomas Witherings devised a self-supporting postal system, with charges regulated according to the distance the letter had to be carried. The rates ranged from 2*d.* for 80 miles and under to 8*d.* for the Border Country and Scotland. After Cromwell, the first important development was the farming out of the "cross-posts" (letters which by-passed the London postal centre) to Ralph Allen, a Bath postmaster, for a starting fee of £6,000 a year. Allen's success was due to his extraordinarily intimate knowledge of the roads and post-towns, and the farming system lasted from 1721 until his death in 1769.

The mail-coaches started running in 1784 and greatly reduced delivery times, though postage rates were periodically increased (principally as a means towards raising revenue for the French Wars). It was not until 1840 that Rowland Hill, after four years of agitation, and a parliamentary inquiry, carried his penny postage scheme, which remained in force until 1918. It is to be feared that it has gone now, never to return.

Postal arrangements in the ancient world seem to have been generally desultory; but the Persian King Cyrus I, in the fifth century B.C., organized communications on a far-reaching scale over the whole of Asia Minor. The Romans brought their system to a high degree of perfection under the Empire; but with the sack of Rome by Alaric, in 410 A.D., Europe relapsed into barbarism, and communications remained poor and unreliable until the time of the Renaissance.

In Asia things were very different. Early in the thirteenth century the military genius of Genghis Khan united the Mongol tribes and created a vast empire which, before his death, extended from Northern China to the Caspian Sea. His great-nephew, Kublai Khan, brought under his sway the whole of China, Southern Russia, Persia, Syria and the borders of Afghanistan. Over the whole of that vast area—from the China Sea to the Mediterranean—he instituted a wonderful network of highways, with military garrisons, inns and post-houses every few miles. The system was organized down to the minutest detail; Marco Polo, who travelled from Venice to Peking (the hard way) between 1260 and 1265, has described the relay-system whereby despatches could be carried by chosen couriers, on horse-back, at the incredible rate of 400 miles in 24 hours. Every three miles a number of powerful horses were kept ready-saddled, day and night, and the riders carried bells on their belts to give warning of their approach, so that the change-over might be made with the minimum of delay. No such international speed was dreamed of again until the coming of the airmail.

Two interesting footnotes to this brief survey may be appended. In a recent case at London Sessions a Fulham postman was convicted for stealing two postal packets while in transmission. A total of 4225 letters and parcels were found at his home, including over 1,000 unopened letters. Interviewed by a G.P.O. investigation officer, the accused had declared: "I thought I could get my work done much more quickly. I have not stolen the letters, but the books are different, I am very fond of reading." It is interesting to speculate what Kublai Khan would have made of this device for postal expedition.

More recently, one Routh, an author and broadcaster, who specializes in "strange experiences," has made history by posting himself from Chelmsford to Wandsworth. According to the *Evening News*, the Chelmsford Postmaster turned up the Regulations and found that livestock could go by post "if wearing a halter or in a receptacle." The analogy was not carried to extreme lengths; Routh was not haltered, stamped, packed or labelled, nor even put into a bag to travel in the mail-van. He was simply sent by train, second class, in charge of a postman in uniform, at a cost of 1*s.* a mile *plus* the postman's fare. Routh's reason for choosing this unprecedented method of locomotion was that "he was tired of travelling about by himself—it was so lonely!" It is permissible to express the hope that not too many members of the public will decide to post such unwieldy packages during the Christmas rush that looms before us.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Commons—*Encroachment by building—Remedies.*

I should be obliged if you could let me know the proper steps to be taken in regard to an allegation made by a parish council that an encroachment has been made upon a village green by a property owner who has erected a forecourt immediately in front of his house, taking in a small area of the village green. From an inspection it appears that similar encroachments have been made in the past by a number of owners, but apparently the parish council, who have now drawn attention to the last infringement, were not alert in the past. It appears from an inspection which was made of the enclosure map dated December, 1814, following an award that the land in question, *i.e.*, the village green, was manorial waste but no manor exists now with which it can be identified. No byelaws have been made by the parish council, neither has this rural district council taken any action in this respect. AFERA.

Answer.

On the information before us, it seems there is an offence under s. 12 of the Inclosure Act, 1857, punishable before magistrates by a small fine, and also under s. 29 of the Commons Act, 1876. The latter section declares the encroachment to be a public nuisance, which means that an indictment can be resorted to, as an alternative to summary proceedings. The council might also consider applying through the Attorney-General for an injunction, but this is at the discretion of the court, and we notice that you speak of the "small area" of the encroachment. The council may think the expense unjustified. The fact that no byelaws have been made does not affect the matter (byelaws would not have affected it, even if made), nor does the past inaction of the two councils. They could argue that it was only as encroachment succeeded encroachment that they realized the danger.

As you will gather, the remedies available are old-fashioned, and not very practical. You might find it worth while to ask the Commons, Open Spaces, and Footpaths Preservation Society, 71, Eccleston Square, London, S.W.1. whether they have had any recent experience of similar cases, and generally ascertain their views about taking action on comparatively small encroachments.

2.—Criminal Law—*Town Police Clauses Act*, 1847, *s.* 28—*Institution of proceedings by summons when offence not witnessed by police—Who may prosecute.*

At the end of our answer to P.P. 3 at p. 748 *ante* the following sentence was accidentally omitted: "The matter is examined at length, with reference to these cases, at 119 J.P.N. 746. There is also P.P. 8 at 119 J.P.N. 518, which may be compared, though it did not arise upon the Act of 1847."

3.—Husband and Wife—*Persistent cruelty—Particulars of acts alleged—High Court practice.*

In your answer to P.P. 2 at 120 J.P.N. 269 last, you stated that "Principles laid down by the High Court in matrimonial cases apply to matrimonial cases in magistrates' courts."

In an allegation of "persistent cruelty," is it to be implied that particulars of the acts of cruelty alleged may be demanded of complainants' solicitors by defendant's solicitors before the hearing before the magistrates' court?

This would certainly seem desirable, particularly as the finding of a magistrates' court may be acted upon later by the High Court in proceedings between the parties. In a case in question, however, complainant's solicitor stated they knew of no authority for this.

Your opinion would be welcomed. GABEL.

Answer.

The principles we referred to were principles of law rather than procedure. The example that springs readily to mind is the definition of desertion contained in judgments pronounced in the Divorce Court. The question raised by our correspondent is rather one of practice than of substantive law. We are of the opinion that, unless a direction has been given by the High Court, a magistrates' court is bound by the procedure laid down in the Magistrates' Courts Act, 1952, and any rules made to regulate procedure. The sort of direction we have in mind is that laid down in *Duffield* v. *Duffield* [1949] 1 All E.R. 1105; 113 J.P. 308, which makes it obligatory to give particulars of any act of adultery alleged by either party. We know of no similar direction requiring particulars of acts of cruelty to be given. For an example of the divergence of practice between the High Court and magistrates' courts, we may refer to the article at 120 J.P.N. 53, and the previous articles therein referred to.

4.—Magistrates—*Malicious Damage Act*, 1861—*Power to order compensation.*

A person has been charged, under the Malicious Damage Act, 1861, s. 41, with the offence of killing a cat. The owner of the cat desires to claim compensation. It appears to me that the power to award compensation under the Criminal Justice Administration Act, 1914, s. 14 (1), only applies if the charge is laid under that section, and does not apply in the present case.

It also appears to me that the general power of magistrates to order compensation is only on conviction of a felony, under the Magistrates' Courts Act, 1952, s. 34, and that this offence is a misdemeanour. Under such circumstances, I am proposing to advise the bench that they have no power to order compensation to be paid. I shall, however, be glad of your views on this. KONMOR.

Answer.

Section 41 of the Malicious Damage Act, 1861, provides that the punishment on summary conviction for an offence under that section shall be imprisonment for not exceeding six months, or else that the defendant "shall forfeit and pay, *over and above the amount of injury done*, such sum of money, not exceeding £20 . . ." There are other sections of the Act imposing a penalty "over and above the amount of the injury done."

Section 64 provides that "every sum of money which shall be forfeited for the amount of injury done shall be assessed in each case by the convicting justice and shall be paid to the party aggrieved . . ."

The magistrates therefore have power to order compensation for injury in a case under s. 41.

5.—Magistrates—*Jurisdiction and powers—Aider and abettor—Conviction when principal offender not prosecuted.*

Recently, an American serviceman was found in a public house with a girl, aged 17 years. The girl was consuming intoxicating liquor, which had been purchased by the man. In the presence and hearing of the girl the man admitted that this was so. The man was told he would be reported under s. 129 of the Licensing Act, 1953; at the same time the girl was informed that she would be reported for aiding and abetting the principal under s. 35 of the Magistrates' Courts Act, 1952.

Before process could be started, the American had left the country, but an information under s. 35 of the Magistrates' Courts Act, 1952, was laid. No information was laid against the American.

Before the magistrates' court, the charge was read out and the girl pleaded guilty, but before the case was proceeded with a discussion took place between the clerk of the court and the justices, after which the chairman announced that the charge could not lie. After asking the police prosecutor if he was prepared to withdraw the summons, to which a negative reply was given, the magistrates dismissed the case.

It is the opinion among a number of persons conversant with this case that the magistrates could, and should, have dealt with the charge against the girl in the absence of any proceedings against the principal. It appears that s. 35 of the Magistrates' Courts Act, 1952 covers this point. LOXON.

Answer.

The fact that the principal offender is not proceeded against is not a reason for refusing to convict the aider and abettor where there is evidence to establish that offence. It may well be, in circumstances such as those outlined in the question, that a court would feel that there were grounds for dealing leniently with the aider and abettor.

6.—Rating and Valuation—*Research institute.*

An application for relief under s. 8 of the Rating and Valuation (Miscellaneous Provisions) Act, 1955 has been received in respect of an institute for research in this district. The institute is not established or conducted for profit, but is grant aided by the Agricultural Research Council and its main objects are concerned with research. It was first established as a research department of a university college and was afterwards re-organized with its own delegate board by means of a deed of trust. In your opinion should this institute be regarded as qualifying for relief under s. 8? A. DOUBTFUL.

Answer.

The position is not beyond argument, but we are inclined to hold that the institute is an organization which is not established or conducted for profit, and whose main objects are . . . concerned with the advancement of . . . education or social welfare. It is still closely associated with the university, and the fact of its earning some profit,

which goes for the purposes of research, etc., is not fatal: *Inland Revenue Commissioners* v. *Falkirk Temperance Café Trust* [1927] S.C. 261.

7.—Rating and Valuation—*Stabling and other property of hunt.*

We have been instructed by the secretary of one of the local hunts in connexion with the rateable values placed on the hunt property under the revaluation which came into effect on April 1, 1956. The hunt property consists of some bungalows, cottages, stables, kennels, and a certain area of meadow land. All this property is let to the hunt by a local company at a figure of rather more than half the new gross rateable values placed on the whole of the property. We think that so far as the living accommodation itself is concerned the general principal of basing the gross value on the letting value of the property in 1939 would apply, but as regards the stables, kennels, and the meadow land it seems to us that the position is rather unusual.

The hunt is a non-profit making organization and these kennels, stables, and meadow land are used solely in conjunction with the usual sporting objects of a hunt. Bearing in mind the lack of demand for such premises in these days, and recognizing the long established practice whereby a hunt hunts a certain part of the country, it appears that the letting value of the stables, kennels, and meadow land as such is nil, except possibly as agricultural land and buildings, and as such they would be entitled to the benefit accorded to agricultural land and buildings and would be exempt from rates.

Can you please let us have your observations on the following points:

(*a*) Can you refer us to any cases dealing with the rating of such premises?

(*b*) In your opinion would the meadow land used by the hunt for grazing horses come within the definition of agricultural land under s. 2 (2) of the Rating and Valuation Apportionment Act, 1928?

(*c*) Would you confirm our opinion that this property would not be entitled to be rated under s. 8 of the Rating and Valuation (Miscellaneous Provisions) Act, 1955?

(*d*) Do you think weight should be given to the fact that, should the present occupiers of this property leave, the only tenantable occupation of the property would be in connexion with agricultural operations, and as such be rated with the benefit accorded to such land?

CANEAD.

Answer.

(*a*) We have searched in vain for a case upon the assessment of hunt property. We do not think the numerous cases upon race-courses and greyhound tracks have any bearing. The property, used as you describe, seems to be *sui generis*.

(*b*) While pasture land is within the definition, we think the exception in the section cited would be held to apply. The horses are kept for purposes of sport or recreation, and we think their pasture is equally "kept" for that purpose.

(*c*) We agree.

(*d*) In *R.* v. *London School Board* (1886) 50 J.P. 419, it was said that school premises if given up by the school board would have small letting value to any other tenant, because no other tenant could use them as they stood, and it was therefore argued that they had a low rental value in the school board's hands. The Court of Appeal held that the school board must be considered among possible occupiers. In our opinion this decision applies here, and the hunt committee can not therefore be excluded from the class of hypothetical tenants.

8.—Road Traffic Acts—*Construction and Use Regulations—Driver and owner—"Using" a vehicle—Proof that driver was employed by owner.*

I have frequent reports of offences against the Construction and Use Regulations submitted to me in which the owner and driver are reported for using the vehicle. In order to prove the driver was employed by the owner it has been necessary to call the police officer who interviewed the owner or to deal with the driver at one court and to call him as a witness at a subsequent one. This practice creates no difficulty when the persons concerned live reasonably near, but where long distances are involved it can be most inconvenient and expensive.

In view of the decision in *Watson* v. *Patterson* (1949) 113 J.P.N. 781, do you consider this difficulty could be overcome by the use and service of forms under s. 41 of the Criminal Justice Act, 1948. KATCO.

Answer.

All that certificates under s. 41, Criminal Justice Act, 1948, could prove would be that the vehicle was owned by A and was driven by B. They could not establish that B was employed by A.

It is difficult without a full report of the case of *Watson* v. *Patterson*, *supra*, to be certain of its effect, but we hesitate to say that proof that a vehicle owned by A is being driven by B puts upon A the onus of proving that B was not in his employment. We think that there must be positive evidence that B was employed by A at the material time and was using the vehicle in the course of his employment.

9.—Road Traffic Acts—*Driving on pavement—Application of s. 14 Road Traffic Act*, 1930.

Do you consider that the words "If any person drives a motor vehicle . . . on any road being . . . a footway" in s. 14 (1) of the Road Traffic Act, 1930 are applicable to the case of a motor vehicle being driven on the footpath by the side of the carriageway in a street—the ordinary pavement or sidewalk of an urban street?

It is argued that this is an alternative provision (for motor vehicles) to the opening words of s. 72 of the Highway Act, 1835, but carrying a heavier penalty. The contrary argument is that the words "any road being a footway" refer to an altogether different kind of road which does not take wheeled traffic at all.

I shall be glad to have your opinion. MISAN.

Answer.

We answered a similar question at 120 J.P.N. 270 (P.P. 7). We do not think that s. 14 of the 1930 Act is applicable to the case in question.

10.—Road Traffic Acts—*Provisional driving licence—Motor cycle with "tradesman's sidecar" attached—Carriage of passengers.*

With respect, I cannot agree with your answer to P.P. 7 at 120 J.P.N. 496. I can see no reason for reading the word "sidecar" as a "sidecar constructed for the carriage of a passenger" in reg. 16 (3) (*b*). My own view is that "Jincon" is right in saying that no provision has been made for the case of a motor cycle to which a sidecar not constructed for the carriage of a passenger is attached.

The purpose of reg. 16 (3) (*b*) is obviously to ensure that a provisional licence holder carries no one other than an experienced rider as a passenger on a solo machine. It does not deal with the necessity of a supervisor, which is dealt within reg. 16 (3) (*a*). Under this paragraph there must be a supervisor if the vehicle is a motor car, whether the vehicle is adapted to carry more than one person or not. If the vehicle is one other than a motor car, the obligation to have a supervisor only exists if the vehicle is constructed or adapted to carry more than one person. By virtue of the proviso at the end of para. (*a*), a motor cycle to which, for instance, a "box" sidecar is attached is not deemed to be constructed or adapted to carry more than one person even if it has a pillion seat, and as I see it, the driver may accordingly carry an unqualified passenger either in the box or on the pillion seat. JINCON AGAIN.

Answer.

We appreciate our esteemed correspondent's argument, but we cannot agree with him. We would emphasize that, in our view, reg. 16 (3) must be read as a whole and that it is the clear intention of the regulation, so read, that if more than one person is carried in or on a motor vehicle driven by the holder of a provisional licence, that other person shall be the holder of a full licence.

It seems to us to make nonsense of the regulation to say that it is to be interpreted as meaning that a learner motor cyclist with a passenger sidecar attached must carry a qualified driver, that if he carries a passenger on a "solo" machine the passenger must be a qualified driver, but that if he has a tradesman's box attached he may carry whom he likes. For that reason, we think that the correct interpretation of "sidecar" in s. 16 (3) (*b*) is the type of sidecar referred to in s. 16 (3) (*a*). Where one of two possible interpretations appear to fit in with the general scheme of the regulation and the other interpretation appears to create a wholly unreasonable exception to that scheme, we think the principle of interpretation requires that the former should be accepted. Unless the High Court otherwise decides, we think this is the correct view to take.

11.—Road Traffic Acts—*Width of load—Projecting more than one foot—Total width exceeding 9 ft. 6 in.—Offences?*

Will you please express your valued opinion about the interpretation of reg. 102 (1) of the Motor Vehicles (Construction and Use) Regulations, 1955. The points in issue are as follows:—

(*a*) Does the regulation prohibit the carriage of *any* load which projects more than one foot laterally beyond the overall width of the vehicle even though the load, despite its projecting more than one foot laterally is less than 9 *ft.* 6 *in.* in overall width, or

(*b*) Does the regulation lay down a maximum overall width of any load of 9 *ft.* 6 *in.*

(*c*) Can more than one offence be committed by one breach of the regulation? IDEW.

Answer.

We think that the object of this regulation is to control the width of loads, and that the offence is to carry a load which does not comply with the regulation. There is a failure to comply with the regulation, either if the load projects more than one foot beyond the overall width of the vehicle, or if the total width of the load exceeds 9 *ft.* 6 *in.* We think it would be unreasonable to seek to charge two offences if the load failed to comply in both respects, this being, in our view, merely an aggravation of the offence of failing to comply with the regulation.